

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	:	BANKRUPTCY NO. 20-10334 TPA
	:	
JOSEPH MARTIN THOMAS,	:	JUDGE THOMAS P. AGRESTI
Debtor.	:	
	:	CHAPTER 11
JOSEPH MARTIN THOMAS,	:	
Movant,	:	DATE AND TIME OF HEARING:
	:	June 3, 2021 @ 11:30 a.m.
v.	:	
	:	RESPONSE DEADLINE:
PNC BANK, NATIONAL ASSOCIATION;	:	May 24, 2021
TAX COLLECTOR, CITY OF ERIE; ERIE	:	
COUNTY TAX CLAIM BUREAU; UNITED	:	
STATES OF AMERICA, INTERNAL	:	
REVENUE SERVICE; COMMONWEALTH	:	
OF PENNSYLVANIA, DEPT. OF	:	
REVENUE; and DALE E. PEHRSSON AND	:	
ROBERT S. PEHRSSON;	:	
Respondents.	:	

MOTION FOR SALE OF REAL AND PERSONAL PROPERTY
FREE AND DIVESTED OF LIENS

AND NOW, comes the Debtor, Joseph Martin Thomas, by and through his attorneys, Michael P. Kruszewski, Esquire of The Quinn Law Firm, and files this Motion for Sale of Real and Personal Property Free and Divested of Liens of which the following is a statement:

PARTIES

1) The Movant, Joseph Martin Thomas (hereinafter "Debtor"), is an individual with a place of business located at Tri-State Pain Institute, 2374 Village Common Drive, Erie, Pennsylvania 16506. The Debtor is represented by Michael P. Kruszewski, Esquire and The Quinn Law Firm, 2222 West Grandview Boulevard, Erie, Pennsylvania 16506.

2) The following named Respondents either appear to have liens on the real property and/or personal property which is the subject of this sale, or alternatively, are named as Respondents for the purpose of notifying them that a sale of the subject property, to which they may have some claim, is being proposed:

(a) PNC Bank, National Association (hereinafter "PNC") is a banking institution with a mailing address of PNC Bank, N.A., P.O. Box 94982, Cleveland, Ohio 44101. PNC is represented by Brian Nicholas, Esquire, KML Law Group PC, 701 Market Street, Suite 5000, Philadelphia, Pennsylvania 19106. PNC is being named as a Respondent as it is the holder of a first Mortgage on the property located at 2100 South Shore Drive, Erie, Pennsylvania in the face amount of \$780,000.00 dated September 9, 2009 and recorded on September 18, 2009 in the Office of the Recorder of Deeds of Erie County, Pennsylvania at Record Book 1591, Page 1529 and re-recorded on December 7, 2009 at Record Book 1607, Page 1982. It is believed that the approximate balance due on this mortgage is \$647,171.24, plus interest and satisfaction costs.

(b) Tax Collector, City of Erie, is a taxing authority with a mailing address of 626 State Street, Room 105, Erie, Pennsylvania 16501-1128. The Tax Collector, City of Erie is being named as a Respondent in regard to the real estate taxes that will be due on the subject property for the year 2021.

(c) The Erie County Tax Claim Bureau has a mailing address of 140 West Sixth Street, Room 110, Erie, Pennsylvania 16501. The Erie County Tax Claim Bureau has a statutory lien for delinquent 2020 real estate taxes in the amount of \$39,294.75, plus continuing interest at the rate of 9% per annum from March 1, 2021.

(d) The United States of America, Internal Revenue Service is an agency of the

United States Government with the following service addresses:

- Attorney General of the United States, U.S. Dept. of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530;
- Internal Revenue Service, 1000 Liberty Avenue, Stop 711B, Pittsburgh, Pennsylvania 15222-3714;
- United States Attorney's Office, Western District of Pennsylvania, ATTENTION: Civil Process Clerk, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Suite 4000, Pittsburgh, Pennsylvania 15219;
- United States Attorney's Office, Western District of Pennsylvania, ATTENTION: Civil Process Clerk, 17 South Park Row, Suite A330, Erie, Pennsylvania 16501;
- Stephen R. Kaufman, Esquire, Acting U.S. Attorney for the Western District of Pennsylvania, Joseph F. Weis, Jr. U.S. Courthouse, 700 Grant Street, Suite 4000, Pittsburgh, Pennsylvania 15219.
- Internal Revenue Service, ATTENTION: Centralized Insolvency Operations, P.O. Box 7346, Philadelphia, Pennsylvania 19101.

The United States of America, Internal Revenue Service is being named as a

Respondent as the following Federal Tax Liens have been entered in the Court of

Common Pleas of Erie County, Pennsylvania:

<u>Creditor</u>	<u>Date of Entry of Lien</u>	<u>Description of Lien</u>	<u>Amount of Lien</u>
United States of America, Internal Revenue Service	June 15, 2018	Federal Tax Lien entered on June 15, 2018 at Case No. 30954-2018 in the amount of \$255,140.32.	\$255,140.32
United States of America, Internal Revenue Service	July 9, 2018	Federal Tax Lien entered on July 9, 2018 at Case No. 31126-2018 in the amount of \$187,570.67.	\$187,570.67

The Debtor has been making payments on the tax obligations that are included in the above-referenced tax liens and it is believed that the current balance due on

these tax liens is approximately \$239,176.77. These tax liens act as a lien on the real estate owned by the Debtor, as well as his personal property. The Internal Revenue Service is represented by Jill Locnikar, Esquire, Assistant U.S. Attorney, 700 Grant Street, Suite 4000, Pittsburgh, Pennsylvania 15219.

(e) The Respondent, Commonwealth of Pennsylvania, Dept. of Revenue, is a governmental agency with service addresses as follows:

- Pa. Dept. of Revenue, Bankruptcy Division, P.O. Box 280946, Harrisburg, Pennsylvania 17128-0946.
- Attorney General of Pennsylvania, Western Regional Office, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.
- Pa. Dept. of Revenue, 4th & Walnut Street, Harrisburg, Pennsylvania 17128.

The Commonwealth of Pennsylvania, Dept. of Revenue is being named as a Respondent because the following liens have been entered in the Court of Common Pleas of Erie County, Pennsylvania:

<u>Creditor</u>	<u>Date of Entry of Lien</u>	<u>Description of Lien</u>	<u>Amount of Lien</u>
Commonwealth of Pennsylvania, Pa. Dept. of Revenue	December 10, 2018	Tax Lien entered on December 10, 2018 at Case No. 32118-2018 in the amount of \$38,193.59.	\$38,193.59
Commonwealth of Pennsylvania, Pa. Dept. of Revenue	February 4, 2019	Tax Lien entered on February 4, 2019 at Case No. 30321-2019 in the amount of \$20,512.12.	\$20,512.12

Debtor has been making payments on the tax obligations that are included in the above-referenced tax liens and it is believed that the current balance due on these tax liens is approximately \$22,185.11. These tax liens act as a lien on the real

estate owned by the Debtor, as well as his personal property. Commonwealth of Pennsylvania, Dept. of Revenue, is represented by Lauren A. Michaels, Deputy Attorney General, Pennsylvania Office of Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

(f) The Respondents, Dale E. Pehrsson and Robert S. Pehrsson, have a mailing address of 1 Golden Eagle Lane, Clarion, Pennsylvania 16214 and are being named as a Respondents because they are the prospective purchasers of the subject property. They are represented by Eugene C. Sundberg, Jr., Esquire, and the Marsh Law Firm, 300 State Street, Suite 300, Erie, Pennsylvania 16507.

JURISDICTION AND VENUE

3) On May 6, 2020, the Debtor filed a voluntary Chapter 11 Bankruptcy Petition under title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Western District of Pennsylvania (the “Bankruptcy Court”), at Case No. 20-10334 TPA.

4) This Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 157 & 1334. This Court has venue over these proceedings pursuant to the provisions of 28 U.S.C. §§ 1408 & 1409. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(N).

5) The statutory basis for the relief requested herein are Sections 105(a) and 363 of the Bankruptcy Code, Rule 6004 of the Federal Rules of Bankruptcy Procedure, and Rules 6004-1 and 9013-3(c) of the Local Bankruptcy Rules of the Bankruptcy Court.

OFFER TO PURCHASE REAL ESTATE AND PERSONAL PROPERTY

- 6) The Debtor holds such title to the Estate as the Bankruptcy Code confers upon him.

The Estate consists, in part, of the following:

The real estate located at 2100 South Shore Drive, Erie, Pennsylvania, Tax Index No. 17-041-034.0-102.00 situate in the City of Erie, County of Erie, and Commonwealth of Pennsylvania, acquired by virtue of a Deed from Denise Illig Robison and Russell Robison, her husband dated November 29, 2000 and recorded on November 29, 2000 in Erie County Record Book 740, Page 873.

A copy of the Deed is attached hereto and made a part hereof as Exhibit "A".

- 7) Based upon market comparables, and consistent with the most recent listing price for the property, it is believed and therefore averred that the fair market value of the property is approximately \$1,150,000.00. Multiple parties were interested in and viewed the property, and the initial offer accepted was for \$1,065,000.00.

- 8) However, home and pool inspections revealed certain deficiencies in the property that warranted a price reduction to \$1,035,000.00. It is believed and therefore averred that the potential value of those deficiencies may be greater than the amount of the price reduction. As a result, the Debtor herein submits that this amount represents that highest and best offer currently available.

- 9) The Debtor has secured an offer for the real estate from Dale E. Pehrsson and Robert S. Pehrsson (hereinafter "prospective purchasers"), in the amount of \$1,035,000.00. A copy of the Agreement for the Sale of Real Estate, as well as an Addendum to Agreement of Sale executed after property inspection, is attached hereto, made a part hereof and marked as Exhibit "B¹."

¹ The Agreement for Sale does contain a mortgage contingency; however, this contingency has been met. The Agreement for Sale also calls for certain property inspections, which have been completed and upon which a price reduction was agreed.

10) Contingent upon approval of the sale of the real estate, the prospective purchasers have also submitted an offer to purchase various items of personal property owned by the Debtor for the total purchase price of \$12,000.00 more fully described in Exhibit "C" attached hereto.

11) The Debtor consulted with a former broker of like personal property in determining the purchase price for the same, which the consultant agreed to do at no charge to the Debtor. Based on the consultant's knowledge of market comparables, in consultation with the Debtor and his court-approved realtor, the Debtor submits that the purchase price for the personal property represents the fair market value of the same.

LIENS

12) The real and/or personal property proposed to be sold either appears to be validly encumbered by the liens identified at Exhibit "D" to this Motion, or alternatively, the Respondents identified at Exhibit "D" are being notified of the proposed sale in order to divest and transfer any potential lien or claim they may have to the subject property.

13) The Debtor believes that the offer of \$1,035,000.00 for the real property is fair and should be accepted. He proposes that the encumbrances and other claims identified at Exhibit "D" to this Motion, to the extent that they validly encumber the subject property, be divested and transferred to the proceeds of sale.

14) The Debtor believes that the total offer of \$12,000.00 for the items of personal property described herein is fair and should be accepted. He proposes that the encumbrances and other claims identified at Exhibit "D" to this Motion, to the extent that they validly encumber the subject property, be divested and transferred to the proceeds of sale.

15) The Debtor also proposes that the funds created by the sale be subject to the prior payment of all administrative costs and expenses allowed by the Court, including, but not

limited to the filing fee for the Motion to Sell Real Property of the Estate Free and Clear of Liens in the amount of \$188.00, as well as the actual out-of-pocket costs for advertising in both the Erie Times News and the Erie County Legal Journal.

16) The Debtor also proposes payment of all usual and ordinary costs of sale, including, but not limited to, the following:

2100 South Shore Drive, Erie, Pennsylvania
Purchase Price: \$1,035,000.00

- a) Payment of no more than \$1,500.00 in fees to be paid to the closing agent who represents the Debtor at the time of the real estate closing;
- b) Any and all municipal fees, as well as any and all water, sewer, and refuse charges, if applicable;
- c) Payment of any and all delinquent real estate taxes in the approximate amount of \$39,294.75, plus continuing interest at the rate of 9% per annum from March 1, 2021;
- d) Current real estate taxes, pro-rated to the date of closing;
- e) This sale is being proposed pursuant to Dr. Thomas's Amended Plan of Reorganization dated April 1, 2021 and, as such, will be exempt from all realty transfer taxes pursuant to §1146(a).
- f) Payment of the Court approved realtor commission of 4.5% in the amount of \$47,925.00;
- g) The sum of \$10,470.00 (1% of the combined purchase price of the real estate and personal property) shall be paid the Office of the United States Trustee on account of quarterly U.S. Trustee's fees due in regard to the disbursements made at the time of the real estate closing.
- h) Payment on the full amount of the first mortgage lien on the real estate located at 2100 South Shore Drive, Erie, Pennsylvania in favor of PNC Bank, National Association, in the approximate principal amount of \$647,171.24, plus interest and satisfaction costs.
- i) Payment on the full amount of the secured tax lien on the real estate located at 2100 South Shore Drive, Erie, Pennsylvania in favor of the Internal Revenue Service in the approximate principal amount of \$239,176.77, plus interest and satisfaction costs, which shall be placed in escrow pending any offset from the Debtor's future tax filings.

- j) Payment on the full amount of the secured tax lien on the real estate located at 2100 South Shore Drive, Erie, Pennsylvania in favor of the Pennsylvania Department of Revenue in the approximate principal amount of \$22,185.11, plus interest and satisfaction costs.
- k) The net proceeds from the sale, after payment of the disbursements outlined in Paragraphs 12(a) through (j) above, which are estimated to be approximately \$21,000.00, shall be paid to Debtor's Counsel, Michael P. Kruszewski, Esquire and the Quinn Law Firm, to be held in its escrow account, on account of the administrative claims of the Debtor, Joseph Martin Thomas.

Personal Property More Fully Described in Exhibit "C"
Purchase Price: \$12,000.00

- l) The proceeds from the sale of the personal property in the amount of \$12,000.00 shall be paid to Debtor's Counsel, Michael P. Kruszewski, Esquire and the Quinn Law Firm, to be held in its escrow account, on account of the administrative claims of the Debtor, Joseph Martin Thomas.

WHEREFORE, the Debtor, Joseph Martin Thomas, respectfully requests this Honorable Court enter an Order confirming the sale of real property, for \$1,035,000.00 and the sale of the personal property described herein for \$12,000.00 to Dale E. Pehrsson and Robert S. Pehrsson subject to higher bids and grant such other relief as this Court deems appropriate.

Respectfully submitted,

THE QUINN LAW FIRM

BY: /s/Michael P. Kruszewski

Michael P. Kruszewski, Esquire

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